the performance of it to someone else, no matter whether the delegation be to a servant under a contract of service or to an independent contractor under a contract for services.'" (*Charlesworth on Negligence* (6th Ed.) Para. 114). The driver of the crane (PW4) was inexperienced; he had only started to operate a crane for the first time on August 16, 1972 and the accident occurred on August 19, 1972. Further, although the plaintiff was on that day engaged in a repetitive and dangerous operation of loading goods from a quayside lorry into the hold of a tongkang no instructions were given to the workers by the first defendants nor was there any adequate supervision on this particular occasion. I am satisfied that no system of work having in mind the safety of the employees was considered at all by the first defendants. In my judgment the first defendants had failed in their duty to the plaintiff as his employers to take reasonable care for his safety as their servant and are liable in damages to him for the injuries suffered by him as a result of the accident due to such failure.

For the reasons stated above the plaintiff is entitled to succeed against the first and second defendants. It seemed to me that there was nothing to choose between the negligence of the two defendants and that they were equally to blame (*Basted's* case (1954) 2 Lloyd's List Law Reports at pages 135 and 146).

I gave judgment for the plaintiff by way of damages in the sum of $177,305 and costs, such damages and costs to be equally borne by the two defendants. I dismissed the claim against the third defendant with costs, such costs to be recouped by the plaintiff from the second defendants after payment thereof by the plaintiff.

Order accordingly.

Solicitors: *Murphy & Dunbar; Allen & Gledhill; Lee & Cheong; T.L. Lee & Co.*

ALICE WEE v. YEO GEK LANG

[O.C.J. (D'Cotta J.) January 13, 1978]
[Singapore — Suit No. 2351 of 1973]

Land Law — Sale of — Contract by correspondence — Breach of — Claim for damages.

Statute of Frauds, 1677, s. 4 — Requirements of — Whether there was sufficient memorandum in writing to constitute contract.

The premises No. 95 Jalan Senang, Singapore, was built by the developers Kim Toh Realty Limited. The plaintiff was a sub-purchaser of the said premises. Some time in 1973 the defendant (a sub-sub-purchaser) offered to purchase the said premises at the price of $164,000 subject to Contract. The defendant paid the 10% deposit to her own solicitors. Subsequently the defendant's solicitors corresponded with the plaintiff's solicitors as to the terms of the Contract. The defendant's solicitors forwarded the engrossment of the Transfer and Restriction to the plaintiff's solicitors for execution by the developers and the plaintiff. The defendant's solicitor also told the plaintiff's solicitor on the telephone that she "did not think there was the necessity of a formal Contract." The defendant subsequently refused to complete the purchase. The defendant contended that as there was no formal Contract in existence between the plaintiff and the defendant the plaintiff could not succeed.

Held: (1) the correspondence that passed between the parties, execution of the Transfer and Restriction by all the parties (except the defendant) and the evidence on oath of the solicitor for the defendant to the effect that there was no necessity of a formal Contract established beyond doubt the existence of a Contract at that stage sufficient to satisfy section 4 of the Statute of Frauds;

(2) the defendant by failing to complete the Contract was in breach thereof and the plaintiff was therefore entitled to judgment for $22,000 i.e. the difference between the Contract price and the price at which the property was eventually sold.

Case referred to:

(1) *Timmins* v. *Moreland Street Property Co. Ltd.* [1958] 1 Ch. 110, 130.

CIVIL SUIT.

Mohamed Abdullah for the plaintiff.

Keh Kee Guan for the defendant.

D'Cotta J.: The plaintiff's claim is for damages for breach of contract in writing contained in letters which passed between the plaintiff by her solicitors and the defendant by her solicitors during the period April 4, 1973 and September 7, 1973 for the sale by the plaintiff to the defendant of freehold property situated at Mukim XXVIII Lot 907 together with the building erected thereon and known as No. 95 Jalan Senang, Singapore.

This suit arises as a result of a breach by the defendant of a sale and purchase of property known as No. 95 Jalan Senang, Singapore (hereinafter referred to as "the subject premises").

The defendant disputes liability on the ground that there is no contract between her and the plaintiff for the purchase of the subject premises and in the alternative if there is a contract the requirements of section 4 of the Statute of Frauds has not been complied with and therefore the contract is unenforceable.

The plaintiff's contention is that despite the fact that there is no written contract, nevertheless the existence of a contract can be inferred from the correspondence that has passed between the parties. It might be advantageous at this stage to give a short history concerning the subject premises.

The subject premises was built some time in 1971 by Kim Toh Realty Pte. Ltd. (hereinafter called "the developers"). The developers were represented by Messrs. Chia & Poh. The subject premises was purchased by a Madam Tan Khuen Tai and her husband. At the time when the sale to the defendant was made, Madam Tan Khuen Tai's husband had died and the administrators of the estate of her husband were Madam Tan Khuen Tai herself and one Tan San. (Madam Tan Khuen Tai and the other administrator are hereinafter called "the original purchasers"). The original purchasers were represented by Messrs. Lui Boon Poh & Co. The plaintiff herein purchased the subject premises from the original purchasers and Messrs. Murphy & Dunbar acted for the plaintiff in the purchase and resale of the subject premises. The defendant, a sub-sub-purchaser of the subject premises, is represented by Messrs. Wee Swee Teow. At the time of the sale and purchase of the subject premises to

the defendant, the title deeds had not been made out in favour of the original purchasers.

Some time towards the end of March 1973 or beginning of April, the defendant and her husband called at the plaintiff's house stating their desire to acquire the subject premises. The defendant straightaway offered $164,000 and was prepared there and then to give a cheque for 10% of this amount and when asked if she (the defendant) had seen the subject premises, she replied that it was not necessary. The plaintiff did not give the defendant a definite answer to this offer but the next day the parties concerned assembled at the office of Messrs. Murphy & Dunbar as a result of which Messrs. Murphy & Dunbar wrote to Messrs. Wee Swee Teow on April 4, 1973 to the effect that their client the plaintiff had agreed to sell the subject premises for the sum of $164,000 and enclosed certain documents — see AB1. Subsequently correspondence passed between the two solicitors — see AB4 to AB10.

As there had not yet been a transfer from the developers to the original purchasers, Messrs. Wee Swee Teow required a transfer direct from the developers to the defendant. AB10 affirmed that Messrs. Murphy & Dunbar would procure a registered transfer of the subject premises direct from the developers to the defendant. It also contained a request that Messrs. Murphy & Dunbar provide a set of transfer and restriction forms for Messrs. Wee Swee Teow's use and on being so provided Messrs. Wee Swee Teow would send a draft transfer for the approval of Messrs. Murphy & Dunbar. The defendant also confirmed that on completion she, the defendant, would pay the whole purchase price less than 5% retention pending the issue of a certificate of fitness of occupation. In return against payment, the plaintiff would give the defendant the following: —

(1) A certificate of title, Vol. 86 Folio 196;

(2) A transfer duly executed in favour of the defendant;

(3) An architect's certificate of completion; and

(4) A certificate of numbering.

Mr. Ho Ung Tuck, Advocate and Solicitor who was formerly with Messrs. Murphy & Dunbar and who was in charge of this transaction, gave evidence on behalf of the plaintiff. Mr. Ho referred to a telephone conversation which he had with Mrs. Hui Shun Yun of Messrs. Wee Swee Teow on May 23, 1973 and said that all that he could recall was that Mrs. Hui wanted a transfer from the developers direct to her client and that there were printed forms for the transfer and restriction which the developers had and he was asked to produce this and that was the subject of the conversation. He could not recall any mention being made as to the completion because four parties were involved in the transaction. The question of inspection of the subject premises was never raised at any time. The purchase price agreed upon was $164,000 and there was no dispute about this. Mr. Ho went on to say that he was not concerned with the contract of sale because during his conversation with Mrs. Hui she had asked for printed forms for transfer and restriction to enable her to prepare a draft for approval by all the parties — see AB10. Mr. Ho also did not ask for the 10% deposit. In his view, at this stage there was a complete contract in existence.

On July 7, 1973, Mr. Ho wrote to Mrs. Hui this time forwarding photostat copies of the agreement dated June 20, 1970 and made between Kim Toh Realty Pte. Ltd. of the one part and Leong Kok Wah and Tan Khuen Tai alias Wong Seng Loi of the other part, Grant of Letters of Administration in Probate No. 645 of 1971 in respect of the estate of Leong Kok Wah, deceased, and Duplicate Certificate of Title (Registered in Volume 86 Folio 196) and agreement dated February 20, 1973 and made between Madam Wee In Neo Alice of the one part and Madam Tan Khuen Tai alias Wong Seng Loi of the other part for her reference and return together with draft transfer and restriction forms for approval of Messrs. Wee Swee Teow. On July 25, 1973, Mr. Ho returned the draft transfer and restriction forms duly approved by all parties — see AB16.

On August 3, 1973, Mr. Ho received a letter from Mrs. Hui which is reproduced as follows: —

"We thank you for your letter of the 25th instant together with enclosures. We forward herewith the engrossment of Transfer and Restriction for execution by your clients."

On August 24, 1973, Mr. Ho again wrote to Mrs. Hui informing her that the transfer and restriction had been executed by all parties and suggesting that August 31, 1973 be the day for completion. Mr. Ho also informed all the other parties. In this connection on August 29, 1973 Mr. Ho telephoned the offices of Messrs. Wee Swee Teow and was referred to a Miss Ong — see Exhibit P2 which is a record of attendance made by Mr. Ho in his own handwriting concerning this conversation he had with Miss Ong on that day.

On August 31, 1973, Mr. Ho received a letter from Mrs. Hui informing him that her client (the defendant) had never seen the subject premises despite repeated requests by her to the plaintiff and furthermore that she would complete in three weeks time if she was given an opportunity to visit the subject premises and found it satisfactory — see AB19.

On September 1, 1973, Mr. Ho wrote to Mrs. Hui explaining the position about inspection and the keys to the subject premises. He also informed Mrs. Hui that on August 31, 1973 all the interested parties except her had assembled at the office of Messrs. Chia & Poh for completion of the purchase but she did not attend. He also informed her that unless the defendant completed the purchase in 10 days the plaintiff would treat the contract as at an end as a result of the defendant's breach — see AB20. To this Mr. Ho received a reply from Mrs. Hui denying there was a contract of sale and purchase in existence and that the correspondence up to date had only referred to terms of negotiations and as such the plaintiff was not in a position to give the defendant notice to complete — see AB21.

In AB24 dated September 27, 1973, Mrs. Hui wrote to Mr. Ho informing him that there was no contract subsisting between their respective clients and therefore there was no money payable by the defen-

dant to the plaintiff. After this the plaintiff commenced proceedings.

Mrs. Hui around whom the defence revolves stated in evidence that she had received the 10% deposit from the defendant but was instructed to hold on to it until further instructions. She also said Mr. Ho assured her that the vendor (the plaintiff) would be able to obtain a transfer from the developers direct to her client, the defendant, and that she had asked Mr. Ho to send her the transfer and restriction forms. This she said was the gist of the conversation and in addition in her own view AB10 was more the mechanics of the conveyance and not the terms of the agreement. At this stage she said there was no formal contract in existence neither did Mr. Ho ask for it. But in her view as a result of the conversation she had with Mr. Ho she did not think there was the necessity of a formal contract. Furthermore AB10 contained the formalities necessary to effect a transfer and she also said that it is a normal practice for developers to have printed forms for transfer and restriction and that is why she asked Mr. Ho to forward a set to her to enable her to prepare the draft transfer for his approval. She went on to say at this stage the vendor was not in a position to complete; there was no contract neither was there an exchange of correspondence agreeing to a date to complete; the letter that she received to complete was not in pursuance of an ordinary contract and was treated by her as a letter to hurry her up. She also said that when she forwarded the engrossment of transfer and restriction to the vendor's solicitors, in her view her client was not bound to complete the purchase. She also stated that she had never instructed anyone in her office that her client, the defendant, would be able to complete on August 31, 1973.

It is not disputed that there was no signed contract of sale as required by the Statute of Frauds but the question for determination by the court is — "was there a sufficient memorandum in writing to constitute a written contract as required by the Statute of Frauds".

I had no reason whatever to doubt the evidence of Mr. Ho Ung Tuck as to the conversation that took place between him and Mrs. Hui on May 23, 1973 and to his conduct during the entire transaction. I was convinced that he was a witness of truth and I accepted his evidence. He did, in my view, all that was required of him as solicitor for the vendor. He said the terms were agreed upon i.e. the price was agreed, the request for transfer and restriction forms by the purchaser was complied with and the request for a direct transfer from the developers was also obtained. Furthermore, he had not asked for the contract of sale to be signed because Mrs. Hui had asked him for the printed forms for transfer and restriction to enable her to prepare a draft for approval by all the parties. He even sent a completion account and in view of the fact that Mrs. Hui had sent him the documents of transfer and restriction for completion by his client which was duly executed by his client, he then gave notice to complete.

Mrs. Hui on the other hand was not convincing at all and a perusal of her evidence would support this. In one breath she stated that as a result of a conversation with Mr. Ho she did not think that there was a necessity for a formal contract as AB10 contained the formalities necessary to effect a transfer. She also asked Mr. Ho to send her the transfer and restriction forms to enable her to prepare a draft for approval by all the parties. When the necessary approval was obtained she even forwarded to the defendant's solicitors the engrossed transfer and restriction forms for execution by all the parties which needless to add was duly executed. This she admitted under cross-examination was the penultimate stage before completion. Now at this late stage when all that was required was a meeting of the parties and execution by her client, she performs a volte face and states that her client is not prepared to complete unless she inspects the subject premises and furthermore that her client was not bound to complete because there was no signed contract of sale. This is a contradiction I find hard to reconcile. It is quite apparent from the correspondence which passed between the parties and more especially when Mrs. Hui sent the engrossed transfer and restriction forms for completion by the plaintiff and all the other parties that the plaintiff and the defendant were *ad idem* as regards the sale and purchase of the subject premises and that they were both fully aware at this stage that there was a contract in existence.

It is pertinent to ask why did Mrs. Hui send the engrossed transfer and restriction forms for completion by the vendor (the plaintiff) and all the other parties and whether or not she did it on the instructions of her client. I can only presume from the evidence that she did so on her client's instructions for if it were otherwise, Mrs. Hui would have to face the consequences. Such being the case, how can the defendant at this late stage refuse to complete on the ground that she had not inspected the subject premises. The first occasion when the defendant saw the plaintiff's husband, the defendant was prepared to put down a 10% deposit. The defendant even went so far as to say that there was no necessity for viewing the subject premises. Some time in the month of June or July the defendant did make a request to the plaintiff to view the subject premises but the plaintiff was not in possession of the keys at that time. At a later date an inspection was then arranged by the plaintiff but the defendant did not turn up but sent somebody to collect the keys on her behalf. This the plaintiff refused to do and stated that she would only give the keys if the defendant came in person. It is indeed very strange that it was only on August 31, 1973, the day fixed for completion, that Mrs. Hui for the first time wrote to Messrs. Murphy & Dunbar informing them that her client had not inspected the subject premises and this after execution of the relevant documents by the plaintiff and after the date fixed for completion.

The plaintiff adduced evidence to the effect that in July 1973, a property in the Jalan Senang area was offered for sale in the *Straits Times* on three occasions — see Exhibits P3(A), (B) and (C) — and on each occasion the advertiser requested those interested to telephone 447936. This telephone number incidentally is the telephone number of Goodearth Realty Com-

pany Ltd. of which the defendant and her husband are the directors and shareholders. The defendant works for this company and she was asked in cross-examination who inserted this advertisement for sale pertaining to the Jalan Senang property in the *Straits Times*. She replied that she did not know about it. Her husband, Teo Lay Swee (DW3) in evidence however said that it was the defendant who was in charge of advertisement of property for sale by Goodearth Realty Company. Goodearth Realty Co. is a development company and there are times when they advertise on behalf of their clients. In the absence of evidence to show that the defendant owned property in that area for sale or that she was selling property in that area on behalf of her clients, the only inference that can be drawn is that the defendant was attempting to sell the subject premises but received no response whatsoever from her advertisements for sale. Such being the case the defendant decided not to proceed with the completion of the purchase of the subject premises and the fact that the defendant had not inspected the subject premises was only an excuse for the reasons abovementioned.

Although there is no formal contract of sale the point to appreciate here is that the contract itself need not be in writing, mere written evidence of it is sufficient. The written evidence supporting a contract is often not to be found in any single document but rather embodied for example in correspondence between the parties. A memorandum within the meaning of the Statute of Frauds may be constituted by several documents if the several documents when physically placed side by side can be seen to refer to the same transaction and each is signed by the defendant then they may be simply read together as a memorandum without any more patent connection.

Jenkins L.J. in *Timmins* v. *Moreland Street Property Co. Ltd.*[1] had this to say:—

"that there should be a document signed by the party to be charged which, while not containing in itself all the necessary ingredients of the required memorandum, does contain some reference, express or implied, to some other document or transaction. Where any such reference can be spelt out of a document so signed, then parol evidence may be given to identify the other document referred to, or as the case may be, to explain the other transaction, and to identify any document relating to it. If by this process a document is brought to light which contains in writing all the terms of the bargain so far as not contained in the document signed by the party to be charged, then the two documents can be read together so as to constitute a sufficient memorandum for the purpose of section 40 of the Law of Property Act, 1925. The laying of documents side by side may no doubt lead to the conclusion as a matter of *res ipsa loquitur* that the two are connected; but before a document signed by the party to be charged can be laid alongside another document to see if between them they constitute a sufficient memorandum, there must, I conceive, be found in the document signed by the party to be charged some reference to some other document or transaction."

In my judgment, the correspondence that passed between the parties and the transfer and restriction forms engrossed by the defendant and forwarded to the plaintiff for execution and duly executed by all the parties to the transaction except the defendant, and also the evidence on oath given by the respective solicitors to the transaction who in the course of their conversation were of the view that there was no necessity for a formal contract and that a contract was already in existence at that stage, establishes beyond doubt the existence of a contract sufficient to satisfy the Statute of Frauds, and by failing to complete the defendant was in breach.

In the circumstances, there will be judgment for the plaintiff for the sum of $22,000 which is the difference between the contract price and the price for which the subject premises was eventually sold and costs including interest thereon at the rate of 8% from August 31, 1973 till to-day.

Judgment on the plaintiff.

Solicitors: *Murphy & Dunbar; Shook Lin & Bok.*